

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariana Thomas	Team: Squad #13	CCRB Case #: 202103284	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/31/2021 4:06 PM	Location of Incident: In front of 1310 Surf Avenue (Nathan's Famous)	Precinct: 60	18 Mo. SOL 11/30/2022	EO SOL 11/30/2022	
Date/Time CV Reported Tue, 06/01/2021 11:56 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/01/2021 11:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Moussannef	14212	967618	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Napolitano	02645	967622	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Moussannef	Abuse: Police Officer Daniel Moussannef threatened to seize § 87(2)(b) property.	
B.POM Daniel Moussannef	Abuse: Police Officer Daniel Moussannef threatened to arrest § 87(2)(b)	
C.POM Daniel Moussannef	Abuse: Police Officer Daniel Moussannef failed to provide § 87(2)(b) with a business card.	
D.POM Daniel Moussannef	Abuse: Police Officer Daniel Moussannef took a photograph of § 87(2)(b)	
E.POM Daniel Moussannef	Abuse: Police Officer Daniel Moussannef took a photograph of § 87(2)(b)	
F.POM Daniel Moussannef	Abuse: Police Officer Daniel Moussannef issued an unlawful summons to § 87(2)(b)	

### Case Summary

On June 1, 2021, § 87(2)(b) filed this complaint via the CCRB's call processing system on behalf of himself and his friend, § 87(2)(b).

On May 31, 2021, at approximately 4:06 p.m., § 87(2)(b) was standing near his car, which was parked in front of Nathan's Famous, located at 1310 Surf Avenue in Brooklyn, while his friends § 87(2)(b) and § 87(2)(b) and § 87(2)(b) 12-year-old daughter, § 87(2)(b) were getting food inside the restaurant. Police Officer Daniel Moussannef and Police Officer Richard Napolitano, both of the 60<sup>th</sup> Precinct, approached, and PO Moussannef allegedly threatened to tow § 87(2)(b) car (**Allegation A: Abuse of Authority**, § 87(2)(g) and arrest him if he did not produce identification **Allegation B: Abuse of Authority**, § 87(2)(g) PO Moussannef allegedly refused § 87(2)(b) request for a business card (**Allegation C: Abuse of Authority**, § 87(2)(g) and took a photograph of § 87(2)(b) and § 87(2)(b) (**Allegation D-E: Abuse of Authority**, § 87(2)(g) PO Moussannef issued § 87(2)(b) a summons for disorderly conduct (**Allegation F: Abuse of Authority**, § 87(2)(g) as well as summonses for engine idling, improperly displayed license plate, obstructed Vehicle Information Number ("VIN"), and parking by a fire hydrant.

§ 87(2)(b) [§ 86(1)(3)&(4)] [§ 87(2)(c)]

Body-worn camera ("BWC") footage of this incident was obtained from the NYPD Legal Bureau. The footage is in IAs #66-67 (**Board Review 01-02**) and summarized in IA #68 and 73 (**Board Review 03-04**). PO Moussannef recorded part of this incident on his department-issued cell phone. The video he recorded is in IA #113 (**Board Review 34**) and summarized in IA #129 (**Board Review 34**). There is no other video evidence in this case.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Daniel Moussannef threatened to seize § 87(2)(b) property.**

**Allegation (B) Abuse of Authority: Police Officer Daniel Moussannef threatened to arrest § 87(2)(b)**

In PO Moussannef's BWC footage (**Board Review 02**), beginning at the 00:06 minute mark of the media player timestamp (visible at the bottom of the screen), he approaches § 87(2)(b) who is standing outside of his car. Though there is no audio, § 87(2)(b) and PO Moussannef presumably speak to one another. PO Moussannef looks down at his phone screen, which is dark. At 01:00, § 87(2)(b) says he came to visit friends and PO Moussannef orders him to produce his ID twice. § 87(2)(b) asks if PO Moussannef is going to run his name again (the footage does not capture PO Moussannef doing this a first time). At 01:09, PO Moussannef says, "Let me get your identification card. Do not make this difficult on yourself. It is going to result in an arrest." § 87(2)(b) asks if he will be arrested for not producing his ID. PO Moussannef says yes and that § 87(2)(b) engine is running, his windows are tinted, and his license plate is not properly affixed. PO Moussannef orders § 87(2)(b) to produce his ID again. At 01:41, PO Moussannef says, "If you fail to provide your identification card or driver license, you will be subject to an arrest." § 87(2)(b) asks PO Moussannef if he is demanding his ID. He says yes and adds, "If you fail to provide it, you will be subject to an arrest." At 01:54, § 87(2)(b) hands PO Moussannef his ID. PO Moussannef says § 87(2)(b) is going to receive summonses. § 87(2)(b) says that is because PO Moussannef's feelings got hurt, and that § 87(2)(b) says he did not commit a crime and that PO Moussannef should have asked him to move his car nicely. At 02:48, § 87(2)(b) approaches PO Moussannef with a card, which the investigation identified as a Sergeant Benevolent Association ("SBA") card, in his hand, and tells him that he can call his family to make

sure everything is good. PO Moussannef's BWC footage begins as he approaches § 87(2)(b) and concludes after he hands § 87(2)(b) his summonses.

§ 87(2)(b) statement was generally consistent with the BWC footage (**Board Review 05**). He testified that he parked his white 2012 320ai BMW approximately four feet away from a fire hydrant and three inches away from the curb directly in front of Nathan's Famous. The car's license plate was visible on the interior rear dashboard of § 87(2)(b) car and not affixed to the car's exterior. A parking meter receipt partially obscured the car's VIN number on the dashboard. § 87(2)(b) and § 87(2)(b) went inside Nathan's Famous, while § 87(2)(b) remained standing outside the driver's side door of his car. Approximately 15 minutes later, PO Moussannef and PO Napolitano, identified via investigation, walked towards § 87(2)(b) and PO Moussannef ordered him to produce ID. § 87(2)(b) returned and tried to show PO Moussannef his SBA card, but PO Moussannef would not take it. PO Moussannef allegedly told § 87(2)(b) "You're not showing ID? Then I'm towing this car."

§ 87(2)(b) statement was generally consistent with the BWC footage and § 87(2)(b) statement (**Board Review 06**). He testified that he tried to present his father's SBA card to PO Moussannef, who ignored him. PO Moussannef said he would tow § 87(2)(b) car if he did not produce ID.

PO Moussannef's statement was generally consistent with the BWC footage (**Board Review 07**). He testified that he approached § 87(2)(b) who was about five feet away from his car, which was running unattended. Upon his approach, PO Moussannef observed that § 87(2)(b) car was blocking a fire hydrant, the license plate was not properly affixed, and the VIN was obstructed. PO Moussannef ordered § 87(2)(b) to produce his license and registration two or three times and § 87(2)(b) refused. PO Moussannef told § 87(2)(b) that failure to surrender his license could result in arrest. When officers are unable to identify a defendant, they can transport them to the stationhouse and process them there. PO Moussannef did not recall whether he told § 87(2)(b) that if he did not produce his ID, his car would be towed.

PO Napolitano's statement was generally consistent with PO Moussannef's (**Board Review 08**).

A warrantless arrest can be made for a petty offense, including violations and traffic infractions, and any crimes made in the presence of a police officer. NYPD Patrol Guide, Procedure 208-01 (**Board Review 09**). When issuing a summons returnable to Traffic Violations Bureau or Criminal Court, an officer must request that the violator show proof of identity and residence and if doubt concerning the identity exists, the officer should remove the violator to the command. NYPD Patrol Guide, Procedure 209-09 (**Board Review 10**).

§ 87(2)(b) and § 87(2)(b) both testified that PO Moussannef threatened to tow § 87(2)(b) car between the time § 87(2)(b) tried to hand his SBA card to PO Moussannef and when § 87(2)(b) produced his ID. This portion of the incident is captured in the BWC footage completely, and shows that PO Moussannef did not threaten to tow § 87(2)(b) car as alleged. § 87(2)(g)

§ 87(2)(b) ultimately received a criminal summons for engine idling and the BWC footage captures PO Moussannef repeatedly ordering him to produce his ID, which § 87(2)(b) initially refuses to do. § 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Daniel Moussannef failed to provide § 87(2)(b) with a business card.**

In PO Moussannef's BWC footage (**Board Review 02**), beginning at the 01:54 minute mark of the media player timestamp (visible at the bottom of the screen), as § 87(2)(b) hands his ID to PO Moussannef, he asks for an incident report. PO Moussannef says he is not only going to get an incident report, but also summonses. § 87(2)(b) and § 87(2)(b) both ask PO Moussannef why he is going to give § 87(2)(b) a summons. At 04:13, § 87(2)(b) tells § 87(2)(b) "Tell him to give me 'the card.' I'm going to call my lawyer," before he briefly walks away. PO Moussannef does not respond. At 06:43, § 87(2)(b) states, "I just want your card before you get the fuck out of here." PO Moussannef does not respond and continues writing the summonses. At 09:28, § 87(2)(b) tells PO Moussannef, "I just need your business card." PO Moussannef does not respond. At 26:31, PO Moussannef hands § 87(2)(b) his summonses and ID. It is unclear in the footage whether any business cards are attached to the summonses.

§ 87(2)(b) statement was generally consistent with the BWC footage, except that he testified that as the officers walked away, he asked PO Moussannef for his business card at least two more times to no response. § 87(2)(b) never received PO Moussannef's business card.

§ 87(2)(b) statement was generally consistent with § 87(2)(b)

§ 87(2)(b) sent photographs of the summonses he received to the CCRB (**Board Review 11-17**). None of the summonses have any business cards stapled to them, or any visible holes that would indicate that something had ever been stapled to them.

PO Moussannef testified that § 87(2)(b) said, "I want your business card before you get the fuck out of here" (**Board Review 07, 36**). PO Moussannef included his business card inside the envelope attached to the back of the criminal summonses he issued to § 87(2)(b). Additionally, his business card was also stapled to § 87(2)(b) copy of the parking violations. When presented with photographs of the parking violations § 87(2)(b) received, which did not appear to have any staples attached to them, PO Moussannef said his business card would have been stapled or paperclipped to a perforated edge, located at the top of the summons, which appeared to have been removed by § 87(2)(b). When presented with photographs of the criminal summonses § 87(2)(b) received, PO Moussannef said his business card would have been inside an envelope attached to the back of each summons, which was not captured in the photographs. PO Moussannef said he was not obligated to provide a business card, however, because his name and tax ID were already on the summonses.

PO Napolitano testified that he did not recall § 87(2)(b) asking for PO Moussannef's business card or PO Moussannef refusing to provide his business card to him.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Daniel Moussannef took a photograph of**

§ 87(2)(b)

**Allegation (E) Abuse of Authority: Police Officer Daniel Moussannef took a photograph of**

§ 87(2)(b)



§ 87(2)(b) testified that after PO Moussannef handed the summonses to § 87(2)(b) PO Moussannef photographed § 87(2)(b) car. § 87(2)(b) walked to the front of the car and stood on the street. PO Moussannef then used his cell phone to photograph § 87(2)(b). § 87(2)(b) asked PO Moussannef not to photograph him, but PO Moussannef did not respond. Without saying anything, PO Moussannef then photographed § 87(2)(b) who was standing by the driver's side of the car.

§ 87(2)(b) testified that after PO Moussannef issued him the summonses, he began using his cell phone to photograph § 87(2)(b) license plate, and the sides and front of his car. He denied that PO Moussannef photographed him or § 87(2)(b).

A NYPD document request for photographs taken on PO Moussannef's department-issued cell phone returned 11 photographs (**Board Review 19-29**), including four of § 87(2)(b) car (**Board Review 19-22**), five of § 87(2)(b) summonses (**Board Review 23-27**), and two screenshots of a DMV search of § 87(2)(b) license plate number (**Board Review 28, 29**). The photograph of the side of § 87(2)(b) car (**Board Review 21**) captures § 87(2)(b) and § 87(2)(b) in the background.

A NYPD document request for videos taken on PO Moussannef's department-issued cell phone returned one video (**Board Review 34**). Beginning at the 00:01 minute-mark timestamp of the media player timestamp (visible at the bottom of the screen), PO Moussannef pans his phone's camera from the back of § 87(2)(b) car to Nathan's Famous, which § 87(2)(b) and PO Napolitano are standing in front of. At 00:03, PO Moussannef points the camera at § 87(2)(b) legs, which are leaned against a fire hydrant. § 87(2)(b) says, "You don't got to be slick and take pictures of me, brother." At 00:08, PO Moussannef walks to the front of § 87(2)(b) car and films the windshield, as he says, "Obstructed VIN."

PO Moussannef testified that he used his department-issued cell phone to photograph and record the violations as an additional layer of evidence for court. PO Moussannef photographed and recorded the license plate, front of the car, fire hydrant, and Nathan's Famous. § 87(2)(b) was sitting on the fire hydrant, so PO Moussannef was unable to record the hydrant without § 87(2)(b) being visible in the photograph. PO Moussannef did not wait for § 87(2)(b) to get up because he had to conduct other law enforcement duties. PO Moussannef acknowledged taking a photograph that captured § 87(2)(b) and § 87(2)(b) in the background (**Board Review 21**), and he said he took that photograph to document where in front of Nathan's Famous § 87(2)(b) car was parked.

NYPD Operations Order 20 (**Board Review 30**), states that officers are permitted to use Department smartphones/tablets to photograph or record all enforcement encounters where there is reason to believe that the individual is committing a violation/petit offense for which a summons may be issued, and vehicle stops.

The video and photographs PO Moussannef took on his department-issued cell phone were taken in relation to the vehicle stop he conducted, in which § 87(2)(b) was issued multiple summonses. Though § 87(2)(b) and § 87(2)(b) were in the background of one of the photos and the cell phone video, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Daniel Moussannef issued an unlawful summons to § 87(2)(b)**

As mentioned above, § 87(2)(b) was issued a summons for disorderly conduct. He testified that after PO Moussannef threatened to tow his vehicle, § 87(2)(b) began raising his voice and used profanity several times, including saying, “That’s fucked up.” He also said some bystanders came to watch the encounter.

PO Moussannef testified that § 87(2)(b) was exhibiting violent behavior throughout the incident, for he was shouting profanities and pointing his finger towards PO Moussannef (**Board Review 36**). Prior to the activation of his BWC, when PO Moussannef requested § 87(2)(b) ID, § 87(2)(b) began shouting profanities, such as “Fuck this and fuck that.” As § 87(2)(b) spoke in a raised voice, he emitted saliva droplets from his mouth, which caused concern because there had been a large spike in COVID-19 cases at the time. Additionally, § 87(2)(b) pointing his finger towards PO Moussannef indicated to PO Moussannef that the situation might escalate. PO Moussannef thought § 87(2)(b) was behaving in this manner because he was upset that he was going to receive summonses, for people are typically unhappy in that situation. § 87(2)(b) profanity caused annoyance and alarm, for a crowd of civilians began to gather in front of Nathan’s Famous. PO Moussannef did not recall how many civilians gathered, but said they were all purchasing food and watching the interaction as it unfolded.

When presented with his BWC footage, PO Moussannef said civilians directly in front of Nathan’s Famous were whom he was referring to as part of the crowd that gathered. He pointed out a man wearing a purple sweater and black pants who was visible in the center of the frame at 02:51, and a man wearing a white shirt and black pants who was visible in the center of the frame at 26:16, as two civilians who were being extra vigilant and attentive. Additionally, PO Moussannef said civilians had gathered prior to the activation of his BWC.

New York State Penal Law, Section 240.20 states that a person is guilty of disorderly conduct when, with the intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he engages in fighting or in violent, threatening behavior, or he makes unreasonable noise, or, in a public place, he uses abusive or obscene language, or makes an obscene gesture, or without lawful authority, he disturbs any lawful assembly or meeting of persons, or he obstructs vehicular or pedestrian traffic, or he congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse, or he creates a hazardous or physically offensive condition by an act which serves no legitimate purpose (**Board Review 39**).

People v. Baker, 20 N.Y. 3d 354 (2013), states that, “critical to a charge of disorderly conduct is a finding that defendant’s disruptive statements and behavior were of a public rather than an individual dimension” (**Board Review 37**). People v. Weaver, 16 N.Y.3d 123 (2011), states that, “a person may be guilty of disorderly conduct only when the situation extends beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem” (**Board Review 38**).

The BWC footage captures § 87(2)(b) using profanity and expressing discontent as PO Moussannef was issuing him summonses. The investigation determined that § 87(2)(b) behavior throughout this incident was consistent with personal anger regarding the fact that he was receiving summonses, rather than an attempt to cause public annoyance, inconvenience, or alarm. The civilians whom PO Moussannef pointed out in his BWC footage as being “members of the crowd,” were merely lone passersby, who briefly looked in the direction of the civilians and officers, on a busy Memorial Day in Coney Island. Additionally, § 87(2)(b) did not address anyone aside from PO Moussannef and § 87(2)(b) and at no point did he obstruct pedestrian or

vehicular traffic. The investigation determined that § 87(2)(b) did not cause public annoyance, or alarm, or cause the situation to escalate beyond the individual disputants, nor did he intend to do so, for, as PO Moussannef acknowledged, people are typically unhappy when receiving summonses.

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 31**).
- PO Moussannef has been a member of service for two years and has been a subject in four CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of February 8, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 33**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

---

Squad: 13

Investigator: \_\_\_\_\_ Inv. Ariana Thomas 06/09/2022  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_ IM Laura Kastner 06/09/2022  
Signature Print Title & Name Date